1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA JOHN SANTOS, JR., 10 11 Petitioner, No. CIV S-02-1571 FCD JFM P 12 VS. 13 TOM MADDOCK, et al., 14 Respondents. **ORDER** 15 16 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of 17 this court's July 27, 2006, denial of his application for a writ of habeas corpus. Before petitioner 18 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. 19 App. P. 22(b). 20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the 21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. 22 § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues 23 satisfy" the requirement. 28 U.S.C. § 2253(c)(3). 24 A certificate of appealability should be granted for any issue that petitioner can 25 demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford, 26

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290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

Petitioner has made a substantial showing of the denial of a constitutional right in the following issues presented in the instant petition: (1) whether he received ineffective assistance of appellate counsel in a prior criminal case; (2) whether a 1986 prior conviction used to enhance his sentence was constitutionally invalid and was therefore ineligible to be used as an enhancement; (3) whether the state court erred in imposing a five-year sentence enhancement based on the prior invalid 1986 conviction; (4) whether he received ineffective assistance of trial counsel in the instant case; and (5) whether the prosecutor committed misconduct.

Petitioner has also requested the appointment of counsel on appeal. That request will be denied without prejudice to its renewal in the United States Court of Appeals for the Ninth Circuit.

Accordingly, IT IS HEREBY ORDERED that:

- 1. A certificate of appealability is issued in the present action; and
- Petitioner's August 11, 2006, request for the appointment of counsel is denied without prejudice to its renewal in the United States Court of Appeals for the Ninth Circuit.
 DATED:August 21, 2006

/s/ Frank C. Damrell Jr. FRANK C. DAMRELL JR.

United States District Judge

¹ Except for the requirement that appealable issues be specifically identified, the standard for issuance of a certificate of appealability is the same as the standard that applied to issuance of a certificate of probable cause. <u>Jennings</u>, at 1010.